



AN EDUCATIONAL SERVICE OF THE  
COLORADO RIVER WATER CONSERVATION DISTRICT

### **Use or Lose? What Abandonment of Water Rights Really Means**

There is an “urban legend” surrounding Colorado’s water rights system that perpetuates a misunderstanding of how water rights work. The myth centers on the “Use It or Lose It” aspect of our water rights laws. The legend has it that if you do not continually use every single drop of the water you have a right to, even if it results in wasteful water use, all or part of your water right can be taken away. This is just plain wrong.

All water in the state of Colorado belongs to its residents. Anyone needing water can file for a water right allowing for the diversion and use of water. To maximize the amount of water available for everyone, water rights holders are limited to using the amount of water “that is reasonable and appropriate to accomplish their purpose without waste, utilizing reasonably efficient water use practices.” By prohibiting wasteful use of water, more water remains available for other uses.

The “use it or lose it” concept is an efficiency measure that cancels unused water rights by declaring them abandoned, giving others the opportunity to put water to beneficial use. It also helps prevent water rights from being used speculatively, since unused water rights cannot be held until there is a shortage and then sold for a profit.

In order for a water right to be abandoned, there must be an unreasonable period of non-use, and the owner **must intend** to permanently abandon the right. Failure to use water for a period of ten years or more is considered an unreasonable period of non-use and would create a presumption of intent to abandon a water right.

If the water right has been used at any time during the previous ten years, it is not placed on the list. A portion of a water right can be declared abandoned if the water rights holder does not have the capacity to put their entitlement to use. For instance, if a water user has a right to 10 cubic feet per second (cfs) of water and their water diversion on has the capacity for seven, the three cfs that cannot be diverted could be subject to abandonment if there is no intent to put the unused portion to use at a future date.

The Division Water Engineer, whose job it is to monitor and enforce water use within a given area of the state, creates an abandonment list that is published once every ten years. A copy of this list is mailed to the owner of each water right included on the list and published in the county where the rights are located. If the water rights holder agrees that

they intend to no longer use the water right, it is officially declared abandoned and all water rights more recent than the abandoned right will now move up a place in the priority system.

If the water rights holder intends to maintain the right, they have six months to protest the designation for abandonment once the final list is published. Holders of water rights that are being considered for abandonment can contest the listing in front of a water court judge to determine the final dispensation of the water rights in question.

Anyone holding a water right should not fear the loss of their right if they are actually using it. Circumstances such as wet weather during irrigation season may not require full use of a water right, and no loss of that water right would result. The unused water could remain in the stream for other downstream users to divert and put to use, while also benefiting the stream environment and habitat. A water rights holder need not resort to wasteful practices to use every drop of water for fear of losing all or part of a water right.